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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,750	10/11/2001	Michael Ferguson	8576-001-27	7168
7590	01/22/2004		EXAMINER	
Supervisor, Patent Prosecution Services PIPER MARBURY RUDNICK & WOLFE LLP 1200 Nineteenth Street, N.W. Washington, DC 20036-2412			NGUYEN, THUKHANH T	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/973,750	FERGUSON, MICHAEL <i>CD</i>
Examiner	Art Unit	
Thu Khanh T. Nguyen	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on 10 October 2003.

2a)  This action is **FINAL**.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 10-17 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of group II, claims 10-17 in Paper No. 9 is acknowledged.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10-12, 14-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Maffet (4,193,206).

Maffet teaches an apparatus and method for forming fertilizers from organic waste, which are derived directly or indirectly from living or formerly living organism and which is digested or undigested (col. 6, line 1-5). The fertilizer system comprises a scrubber for removing odor from the air (col. 8, lines 60-64), a dryer system (col. 7, lines 48-63) to pasteurize the material at about 190°-400°F (col. 9, line 2-4), to dry the pasteurized material to form powder material (particulate product; col. 9, lines 13-15), and a polluting system (36, 37) for forming uniform pellets from the powder material (col. 9, lines 28-43); wherein the palletizing system reuses captured moisture produced by the scrubber (20, 24). The apparatus further comprises a finish area ventilation system (col. 10, lines 7-23) for cooling and storing the pellets.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13 are 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maffet ('206).

Maffet discloses an apparatus for forming fertilizer pellets from organic waste as described above. However, Maffet fails to disclose that the apparatus comprises two pellet mills each produces 10 tons of pellets per hours and the pellets are about 1 mm to 6.5 mm long.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to recognize that the amount produced, the size and shape of the product are changeable depending on the capacity of the apparatus and the operating conditions. It would also have been obvious to one of ordinary skill in the art to provide multiple pellet mills to expedite the pelletizing process.

It has been held that a functional limitation asserted to be critical for establishing novelty may, in fact, be an inherent characteristic of the prior art. The applicants is required to prove that the subject matter shown in the prior art does not necessarily possess the characteristics relied on. *In re Schreiber*, 128 F. 3d 1473, 1478, 44 USPQ 2d, 1432 (Fed. Cir. 1997); See also, *In re Spada*, 911 F 2d 705, 708, 15 USPQ 2d 1655, 1658 (Fed. Cir. 1977); *In re Best*, 562 F. 2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977); and *Ex Parte Gray*, 10 USPQ 2d 1922, 1925 (Bd. Pat. App. & Int. 1989).

In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

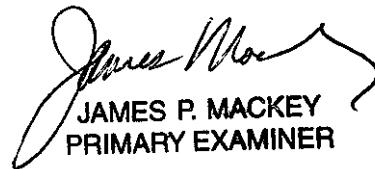
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Modig (5,628,913) discloses a method and apparatus for producing plant nutritive pellets from wastewater sludge, comprising a wastewater treatment plant, a dryer and a pelletizer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

TN

  
JAMES P. MACKEY  
PRIMARY EXAMINER  
1/12/04